

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BRIAN COOLEY and COOLEY & CO. LTD.,

Plaintiff,

v.

LOUIS PSIHOYOS,

Defendant.

Case No. 12-cv-0001 (LAK)

Hon. Lewis A. Kaplan

**ECF CASE
Filed Electronically**

**DECLARATION OF DANIAL A. NELSON IN SUPPORT OF
DEFENDANT PSIHOYOS' MOTION FOR SUMMARY JUDGMENT**

I, Danial A. Nelson, an attorney duly admitted to practice before this Court, do hereby declare under penalty of perjury as prescribed in 28 U.S.C. § 1746, as follows:

1. I am a partner at Nelson & McCulloch LLP and one of the attorneys for Defendant Louis Psihoyos ("Psihoyos") in this action. I have personal knowledge of the facts contained in this declaration and am competent to testify to them.
2. I submit this declaration in Support of Defendant Psihoyos' Motion for Summary Judgment.
3. Attached hereto as Exhibit 1 is a true and correct copy of a "Letter of Agreement and Purchase Order for National Geographic Artwork" between Plaintiff Cooley and National Geographic Society executed November 30, 1995. This document was produced during discovery in this action by counsel for NGS. This document was produced without an identifying Bates number.
4. Attached hereto as Exhibit 2 is a true and correct copy of a letter of agreement between Defendant Psihoyos and National Geographic Society dated July 17, 1995. This

document was produced during discovery in this action by counsel for NGS. This document was produced without an identifying Bates number.

5. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiffs' Responses to the First Requests for Admission of Defendant Louis Psihoyos, dated February 23, 2012.

6. Attached hereto as Exhibit 4 is a true and correct copy of the February 3, 2012 affidavit of Psihoyos filed in support of Defendants' Supplemental Memorandum of Law in Opposition to Plaintiffs' Motion for Preliminary Injunction (Docket No. 34).

7. Attached hereto as Exhibit 5 is a true and correct copy of the table of contents of the January 1993 edition of *National Geographic* magazine, including a story entitled "Dinosaurs" by Rick Gore featuring photographs created by Psihoyos. This document was produced by Psihoyos in this action under PSIHOYOS000001.

8. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the March 1, 2012 Deposition of Plaintiff Brian Cooley.

9. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the March 12, 2012 Deposition of Terry Adamson, testifying for the National Geographic Society ("NGS") under Fed. R. Civ. P. 30(b)(6).

10. Attached hereto as Exhibit 8 is a true and correct copy of an invoice (Invoice # 9500207) dated December 5, 1995 submitted by Plaintiff Cooley & Co. Ltd. to NGS. This document was produced in discovery in this action by counsel for NGS. This document was produced without an identifying Bates number.

11. Attached hereto as Exhibit 9 is a true and correct copy of a payment record dated December 19, 1995 regarding payments made by NGS to Plaintiff Cooley related to Cooley's work on models for the "Dinosaur Eggs" story. This document was produced in discovery in

this action by counsel for NGS. This document was produced without an identifying Bates number.

12. Attached hereto as Exhibit 10 is a true and correct copy of a payment record dated January 3, 1996 regarding payments made by NGS to Psihoyos related to Psihoyos' work on two projects, including the "Dinosaur Eggs" story. This document was produced during discovery in this action by counsel for NGS. This document was produced without an identifying Bates number.

13. Attached hereto as Exhibit 11 are true and correct copies of three letters from Amanda MacEvitt, an illustrations editor at NGS, to Barbara Sadick, at Matrix International (a stock photography agency that previously licensed Psihoyos' works), transmitting to Matrix the film and images that Psihoyos created for the "Dinosaur Eggs" story. These documents were produced during discovery in this action by counsel for NGS. These documents were produced without identifying Bates numbers.

14. Attached hereto as Exhibit 12 are true and correct copies of two invoices dated September 3, 1997 and June 10, 1997 related to two licenses purchased by NGS from Psihoyos and Matrix International covering additional uses of Psihoyos' photos from the "Dinosaur Eggs" story. These documents were produced during discovery in this action by counsel for NGS. These documents were produced without identifying Bates numbers.

15. Attached hereto as Exhibit 13 is a true and correct copy of Plaintiffs' Objections and Responses to Defendant Louis Psihoyos' Interrogatories dated June 14, 2012 and verified by Plaintiff Cooley on June 19, 2012. Plaintiffs' counsel served these Responses via electronic mail on June 19, 2012.

16. Attached hereto as Exhibit 14 is a true and correct copy of the certificate of copyright registration VA 888-299 (Dec. 10, 1997) related to Psihoyos' photographs from the "Dinosaur Eggs" story. This document was produced by Psihoyos in this action under PSIHOYOS000118-120.

17. Attached hereto as Exhibit 15 are true and correct copies of two certificates of copyright registration VA 1-793-313 (dated Nov. 10, 2011) and VA 1-793-315 (dated Nov. 10, 2011) purporting to cover the "Segnosaur Embryo" and "Therizinosaur" models created by Cooley for NGS in 1995. These documents were produced in this action by counsel for Plaintiffs. These documents were produced without identifying Bates numbers.

18. Attached hereto as Exhibit 16 is a true and correct copy of a copyright transfer agreement between Plaintiff Brian Cooley and Plaintiff Cooley & Co. Ltd. dated November 15, 2011. This document was produced in discovery in this action by counsel for Plaintiffs. This document was produced without an identifying Bates number.

19. Attached hereto as Exhibit 17 is a true and correct copy of a Settlement Agreement with Getty Images. This document was produced in discovery in this action by counsel for Getty Images. This document was produced without an identifying Bates number.

20. Attached hereto as Exhibit 18 are true and correct copies of screen captures of the data and information maintained by Psihoyos (in Adobe Photoshop 7.0) for the .TIFF image file that Psihoyos identifies as "Dino Egg Model 0002 – Model by Brian Cooley." This information accompanied the image file that provided by Psihoyos to his licensing agents. These documents were produced by Psihoyos in discovery in this action under PSIHOYOS000215-219.

21. Attached hereto as Exhibit 19 are true and correct copies of screen captures of the data and information maintained by Psihoyos (in Adobe Photoshop 7.0) for the .TIFF image file

that Psihoyos identifies as “Therizinosaur Embryo #0001 - Sculpture by Brian Cooley.” This information accompanied the image file that provided by Psihoyos to his licensing agents. These documents were produced by Psihoyos in discovery in this action under PSIHOYOS000211-214.

22. Attached hereto as Exhibit 20 are true and correct copies of screen captures of the data and information maintained by Psihoyos (in Adobe Photoshop 7.0) for the .TIFF image file that Psihoyos identifies as “Dino Egg ‘Baby Louie’ 1 – Sculpture by Brian Cooley.” This information accompanied the image file that provided by Psihoyos to his licensing agents. These documents were produced by Psihoyos in discovery in this action under PSIHOYOS000197, PSIHOYOS000204, and PSIHOYOS000207-209.

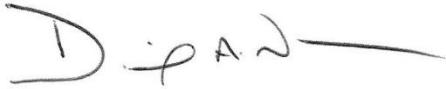
23. Attached hereto as Exhibit 21 are true and correct copies of screen captures of the data and information maintained by Psihoyos (in Adobe Photoshop 7.0) for the .TIFF image file that Psihoyos identifies as “Dino Egg ‘Baby Louie’ 2 – Sculpture by Brian Cooley.” This information accompanied the image file that provided by Psihoyos to his licensing agents. These documents were produced by Psihoyos in discovery in this action under PSIHOYOS000199, PSIHOYOS000202-203.

24. Attached hereto as Exhibit 22 is a true and correct copy of the inside of the front cover of the 2001 edition of Psihoyos’ *Hunting Dinosaurs*. This document was produced by Psihoyos in discovery in this action under PSIHOYOS000299.

25. Attached hereto as Exhibit 23 is a true and correct copy of a letter (and accompanying attachments) from Sam P. Israel, counsel for Plaintiffs, to Jeffrey L. Loop, counsel for Corbis Corporation, dated March 23, 2012. This document was produced by Corbis on or about June 19, 2012 in response to a subpoena served by Psihoyos. Plaintiffs’ counsel did not produce either this letter or the accompanying attachments during discovery in this action.

Dated: New York, New York
June 29, 2012

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Attorney for Defendant Louis Psihoyos

CERTIFICATE OF SERVICE

I, Danial A. Nelson, an attorney, hereby certify that I caused a true and correct copy of the foregoing to be served via ECF or electronic mail on all counsel listed below on this 29th day of June, 2012.

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Dated: June 29, 2012



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